IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

CRL.A.No. 198 of 2005()

CC.46/2000 of ENQUIRY COMMR. & SPL.JUDGE, KOZHIKODE

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APPELLANT: COMPLAINANT

STATE OF KERALA, REPRESENTED.BY THE DY.S.P.
VIGILANCE AND ANTI-CORRUPTION BUREAU, PALAKKAD
REPTD. BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.DILEEP

RESPONDENTS: ACCUSED

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1. V.G.DAVID S/O. K.S.GEORGE,
PUTHENPURAYIL HOUSE, PAYYANEDAM P.O.,
MANNARKKAD (FORMERLY VILLAGE OFFICER, AGALI).

2. M.S.SUBHASH S/O. JNANASUNDARAM,
MULAKODIYIL HOUSE, PAYAPPAD VILLAGE,
PALLIKKACHIRA, CHANGANASSERY, KOTTAYAM
(FORMERLY VILLAGE ASST.AGALI).

BY ADV. SRI.S.VIJAYAKUMAR
SRI.P.VIJAYA BHANU
SRI.B.MOHANLAL
SRI.P.M.RAFIQ

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14-6-2007 , THE COURT ON 14/06/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 198 of 2005

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Dated this the 14th day of June, 2007

JUDGMENT

State has filed the appeal against the judgment in C.C. No.46/2000 on the file of the Court of the Enquiry Commissioner and Special Judge, Kozhikode. The prosecution case against the respondents is that while the 1st respondent was working as the Village Officer, Village Office, Agali and the 2nd respondent was working as Village Assistant in the same office, the 1st respondent demanded Rs.1,000/- from one Asokan, a native of Agali, for issuing a certificate to him and 2nd respondent demanded Rs.500/- for the same purpose and in pursuance of the said demand the 1st respondent accepted Rs.500/- and the 2nd respondent accepted Rs.300/- from Asokan as part payment of the bribe amount demanded by them and thereby committed the offence charged against them. To prove the case against the respondents, the prosecution examined PW1 to 14 and relied on Exts.P1 to P26. MO.I to MO.12 were also marked on the side of the prosecution. After closing the prosecution evidence, the respondents were questioned under section 313 Cr.P.C.. They denied the allegation and filed their separate statements. On the side of the defence Ext.D1 notice showing the State

Level inaugural function for the distribution of land to Scheduled Tribes. The trial court after considering the evidence, acquitted the respondents under section 248 Cr.P.C. holding that no offences were proved against the respondents.

2. This Court heard learned Public Prosecutor and learned counsel for the respondents.

3. The learned Public Prosecutor submits that the testimony of PW1 would not have been discarded on the ground that he was declared hostile to the prosecution. The learned Public Prosecutor also submits that the reasons stated by the trial court for acquitting the respondents are not based on sound reasons. The learned Public Prosecutor further submits that the evidence would show that the respondents have demanded bribe amount and part of the amount was accepted by them from PW1 for issuing certificate.

4. In his evidence PW1 stated that an application filed by him was under process and during that time there was a meeting on 30-6-1999 in the D.D.O., Mannarkkad convened by Collector in order to chalk out the details of the State Level inaugural function of the distribution of land to the Scheduled Tribes who lost their lands and in that meeting there was a discussion regarding the expenses for conducting the inaugural function

and unofficially it was decided in that meeting that sponsors were to be found out and the amount for the expenses of the function to be met by collecting or receiving contributions from the sponsors and PW1 agreed to pay Rs.1000/- for the aforesaid purpose. Ext.D1 notice relates to the State Level inaugural function for the distribution of land to Scheduled Tribes. The evidence of PW1 shows that he volunteered to give the printing charge and also the amount for fixing banners for the function. The trial court found that there is no evidence to show that PW1 gave Rs.500/- to the 1st respondent and Rs.300/- to the 2nd respondent as part of the bribe money and that the 1st respondent received Rs.500/- and the 2nd respondent received Rs.300/- from PW1 on 3-7-1999 as gratification for doing any official act. The trial court also found that PW1 willfully and knowingly tendered false evidence before the court with a view to see that the respondents are brought to book and hence the trial court found that the respondents found not guilty of the offences. The trial court relied on a decision of the Supreme Court reported in Sooraj Mal V. State (Delhi Administration) (1979) 4 SCC 725). In the above decision the Supreme Court held that that mere recovery of money divorced from the circumstances under which it was paid was not sufficient to convict the appellant when the substantive evidence in the case was not reliable. It has

come out in evidence that the only evidence available is that of PW1. The trial court found that the evidence of PW1 was of no value as he had given false evidence in the case as could be seen from his own version. The trial court also found that PW1 went to the Vigilance Office after consulting his friends, who were also in inimical terms with the village officials, with the aforesaid Rs.800 for trapping the respondents. The trial court further found that "t**he evidence of PW1, the only witness who speaks on the complicity of the accused as far as the solicitation of the gratification is concerned, itself shows that the case of the prosecution that the 1st respondent demanded Rs.1000 as bribe from PW1 and the 2nd respondent Rs.500/- as bribe is not correct"**. The evidence of PW1 would show that for the purpose of issuing the certificate no bribe was asked by the respondents. The trial court found that PW1 nursed a grudge against the 1st respondent who did not recommend for issuance of patta in his favour on a former occasion .

5. In the above circumstances, this Court is of the view that the trial court has correctly appreciated the evidence and found that the prosecution has failed to prove the case against the respondents. Hence, the findings of the trial court require any interference by this Court. Even if a second view is possible, unless and until compelling circumstances are there to interfere

with the judgment of acquittal, this Court is reluctant to do so. Therefore, the appeal stands dismissed.

K.Thankappan,
Judge.

mn.

K. Thankappan, J.

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Crl.A.No. 198/2005

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Judgment
14-6-2007